IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2265 of 2002
WITH
FIRST APPEALNo 2266 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNITED INDIA INSURANCE CO. LTD

Versus

CHAMPABEN,D/O. LADUJI BHURATJI,

Appearance:

First Appeal No.2265 of 2002.

MR PV NANAVATI for Appellant.
MR VIBHUTI NANAVATI for Appellant.
NOTICE SERVED for Respondent No. 1-2
SERVED BY AFFIX.(N) for Respondent No. 3

First Appeal No.2266 of 2002.

MR PV NANAVATI for Appellant.
MR VIBHUTI NANAVATI for Appellant.
MR SANJAY R.PATEL for Respondents No. 1 to 4.
RESPONDENT No. 5 served.
RESPONDENT NO.6 served by affixing.

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 19/02/2003

COMMON JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1 These two appeals are arising out of the Motor Accident Claim Petitions No.720 of 1992 and 427 of 1992 in relation to First Appeals No.2265 & 2266 of 2002 respectively. Both the appeals have been filed by United India Insurance Company Limited against the common judgment and award dated 6.7.2002.

2 The appeals are filed on various grounds but Mr.P.V.Nanavati, learned Advocate appearing in both the appeals on behalf of the appellant Insurance Company has limited challenge to the rate of interest awarded by the Motor Accident Claims Tribunal (Main) Sabarkantha at Himmatnagar. The Tribunal has awarded the interest @ 12% p.a. from the date of the application till date of realization. Mr.Nanavati, learned Advocate submits that in light of the decision rendered by the Supreme Court in case of Smt.Kaushnuma Begum & Ors. Vs. The New India Assurance Co. Ltd. & Ors. the Tribunal has committed an error by awarding interest @ 12% and the same should be restricted to rate of 9%.

3 In light of the fact that on behalf of the appellant Insurance Company no other aspect of the judgment and award is challenged, it is not necessary to set out the details as regards the nature, date and time of the accident, as well as the aspect of negligence and the income of the victims of the accident in question.

4 On 17.1.2003 after hearing Mr.Nanavati, notice for final disposal was issued and Mr.Sanjay R.Patel, learned Advocate appears on behalf of respondents no. 1 to 4 in First Appeal No.2266 of 2002. In so far as First Appeal No.2265 of 2002 is concerned, the respondents have been duly served and there is no appearance on behalf of the said respondents in the said appeal.

5 Mr.Patel, learned Advocate appearing on behalf of respondents No.1 to 4 i.e. original claimants in MAC Petition No.427 of 1992 has submitted that the decision in case of Smt.Kaushnuma Begum (supra) does not lay down a straight jacket formula and the rate of interest

awarded by Tribunal should not be disturbed because the Tribunal has awarded the interest at the rate which was prevalent at the point of time of the accident. It was further submitted by him that the rate of interest at 9% is a recent phenomenon and should not be applied to all cases regardless of the point of time when the accident took place. In support of his submission Mr.Patel has placed reliance upon the Supreme Court decision in case of Employees' State Insurance Corporation, West Bengal Vs. Ganpat Lohar reported in 1985 ACJ 646 and the decision in case of Shoba Rani and others Vs. New India Assurance Co.Ltd. and Another reported in 2002 ACJ 1682. On the basis of the aforesaid two decisions it was contended by Mr.Patel that the Supreme Court in case of Shoba Rani(supra) has upheld the interest awarded @ 12% by reversing decision of the High Court when the High Court had granted interest on the enhanced compensation 6%.

6 As against this, it was submitted by Mr.Nanavati that this Court has consistently followed the decision in case of Smt.Kaushnuma Begum and ors. (supra) and has invited our attention to various unreported decisions of different Division Benches of this Court in this regard. It was also pointed out by Mr.Nanavati that the ratio in case of Smt.Kaushnuma Begum (supra) regarding rate of interest has been reiterated by another Bench in case of United India Insurance Co.Ltd. Vs. Patrica Jean Mahajan & Ors., reported in AIR 2002 SC 2607.

7 Having heard both the sides and after considering the various decisions cited at the bar we find that these appeals are required to be allowed to the extent of reduction in the rate of interest from 12% to 9%. In the decision in case of Smt.Kaushnuma Begum and ors. (supra) the accident had occurred in March,1986 and the Apex Court granted interest @ 9% on 3.1.2001 by observing in para 24 that :

> "Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of the Reserve Bank of India the interest rate has been lowered. The nationalized banks are now granting interest at the rate of 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants.

8 Thus, it is apparent that the Apex Court has

taken into consideration the prevalent rate of interest in context of the banking regulations and the policy laid down by Reserve Bank of India. If the same factor is taken into consideration, considering the present economic scenario, we do not find any justification for awarding rate of interest at 12% as the Tribunal has done, and hence, the judgment and award of the Tribunal deserves to be modified to the said extent. Accordingly, we hold that the claimants - respondents herein, are entitled to interest @ 9% on the amount awarded from the date of the application till the date of realization instead of 12% awarded by the Tribunal in the impugned judgment and award dated 6.7.2002.

9 Mr.Nanavati prays that excess amount of interest deposited may be directed to be returned. Upon the appellant Insurance Company furnishing necessary details working out the excess interest deposited with the Claims Tribunal, on verification of such details, excess amount, if any, would be returned to the appellant insurance company.

10 Both the appeals are partly allowed to the aforesaid extent. There shall be no order as to costs.

(N.G.Nandi, J) (D.A.Mehta, J)

m.m.bhatt